

Balraj Khanna and Others

Vs

Moti Ram

Criminal Appeal No. 14 of 1971

(C. A. Vaidialingam, A. N. Ray JJ)

22.04.1971

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal, by special leave, is directed against, the judgment and order, dated August 26, 1970 of the Delhi High Court in Criminal Revision No. 138 of 1968 dismissing under Section 203, Cr.P.C. the complaint filed by the respondent under Section 500, I.P.C.
2. The respondent Moti Ram filed a complaint in the Court of the Sub-Divisional Magistrate, Delhi against the seven appellants under Section 500, I.P.C. alleging that they made certain allegations against him which were defamatory in character and has also passed a resolution placing the respondent under suspension.
3. The complaint filed by the respondent is a fairly lengthy one and refers to various matters. But the relevant facts which could be gathered from the same appear to be as follows :

The respondent during December, 1964 was serving as a Liaison Officer, Municipal Corporation, Delhi. The appellants were among the members of the Standing Committee of the Corporation at that time. The first appellant Balraj Khanna was bitterly inimical towards the respondent and was bent upon causing harm to him. He wielded considerable influence over the members of the Standing Committee. At his instance a requisition was given by the members of the Standing Committee to its Chairman to summon a meeting of the Committee to enable them to move a resolution for the immediate suspension of the respondent from his office. Accordingly a meeting of the Standing Committee was held on December 10, 1964. The said meeting was attended, not only by the Commissioner and other officers of the Corporation, but also by the press reporters. In that meeting the appellants made very serious allegations of a defamatory nature against the respondent and passed unanimously a resolution placing him under immediate suspension. The allegations made against the respondent and the fact of his suspension from office were given wide publicity, with the result that it brought down the respondent in the estimation of his friends causing harm to his reputation. P.W. 3, who was the Secretary of the Corporation, and who attended the meeting of the Standing Committee on December 10, 1964, sent a report the next day Ex. P.W. 3/B to the Commissioner regarding the allegations stated to have been made against the respondent by the appellants. The allegations referred to in Ex. P.W. 3/B are as follows :

"1. Since its inception in 1958, the Corporation has executed a very heavy programme of works for improving the sanitation of the Corporation and provide other civic amenities, but no publicity was given to these activities and the public has

remained more or less in the dark. On the other hand the Corporation is adversely criticised even for minor omissions and commissions. The L.O. has, thus not performed the duties which are required of the post he had been holding and has been deficient in the performance of his duties.

2. The L.O. is not working in harmony with the representatives of the Press who attend the Corporation office to cover the meetings of the Corporation and its Committee, so much so that these representatives have desired that he be not required to come to their rooms in the Corporation office.
 3. Instead of applying himself seriously to his official work he indulges in estranging one member from the other, one officer for the other and one political party for the other. He has even been trying to sow seeds of estrangement between the Mayor and the Commissioners.
 4. In the days when he was Chief Reporter to the Hindustan Times, he resorted to undesirable means to achieve his desired ends.
 5. His association with some of the non-Official Presidents of the erstwhile Delhi Municipal Committee has brought nothing but slur to their good names.
 6. He is known for indulging in acts of moral turpitude and for seducing unsuspecting girls and women."
4. In the complaint it is further stated that in October, 1964, all the seven appellants entered into a conspiracy to defame the respondent and remove him from the municipal service and passed a resolution on December 10, 1964, placing him under suspension. It is further stated that apart from the seven appellants, three other members of the Standing Committee were also parties to this resolution. In particular, it is alleged in the complaint that in the course of discussion relating to the passing of the resolution, all the seven appellants made wild and baseless allegations involving moral turpitude against the respondent. After passing the resolution, the appellants with the ulterior motive of maligning the respondent and lowering him in the estimation of the public, gave publicity to the resolution in the local newspapers with large circulation. The allegations stated to have been made by the appellants are those referred to in Ex. P.W. 3/B. The respondent alleged that the appellants knowingly and maliciously made false and defamatory allegations against him and prayed for taking action against them.
5. Before the Magistrate the respondent and five other witnesses were examined under Section 202, Cr.P.C. and after consideration of the evidence, the Magistrate dismissed the complaint under Section 203, Cr.P.C. The dismissal of the complaint by the Magistrate is rested on two grounds, namely : (1) there is no evidence on record as to which of the appellants made which allegation against the respondent and in the absence of such an important ingredient, no prima facie case against any of the appellants can be said to have been made out, and (2) the resolution passed by the Standing Committee and the discussion preceding it are covered by the Exceptions to Section 499, I.P.C. and here the appellants were well within their rights in passing a resolution recommending suspension of the respondent.
6. The Additional Sessions Judge, Delhi, dismissed the revision of the respondent summarily stating that the material on record was no sufficient to justify any direction being given to the trial Magistrate to make further inquiry into the complaint. The Sessions Judge has further stated that the

evidence produced by the respondent is too general to make out a case to summon any one of the appellants.

7. The High Court, after a reference to the material evidence on record, as well as the allegations stated to have been made by the appellants, has held that the approach made by the Magistrate for dismissing the complaint was erroneous. In the view of the High Court, the evidence on record goes to show that the case of the respondent is that all the members of the Standing Committee including the appellants, had made the allegations against the respondent, which had been reproduced by the Municipal Secretary in Ex.P.W. 3/B. On this reasoning the High Court held that it cannot be said that there is no evidence as to which member of the Standing Committee made the allegation against the respondent. According to the High Court the evidence as it stands implicates all the members of the Standing Committee including the appellants herein in the charge of making the defamatory allegations against the respondent. The High Court has further held that if at a later stage when witnesses are examined, it is found that only some of the appellants made the allegations and also what those allegations are, it will be open to the trial Magistrate to discharge such of the accused against whom there is no evidence of having made any defamatory allegation. The High Court is also of the view that the reasoning of the Magistrate that the appellants are protected by the Exceptions to Section 499, I.P.C. is also not correct. Ultimately, the High Court set aside the order of the Magistrate dismissing the complaint under Section 203, Cr. P.C. and directed further inquiry to be made into the complaint by the Chief Judicial Magistrate, Delhi or by any Magistrate subordinate to him, and to dispose of the same in accordance with law.

8. Mr. C. K. Daphtary, learned counsel for the appellants, contended that in cases of defamation it is essential that the actual words used should be set out in the complaint and a reproduction of the gist or substance of the words used is not enough. He further contended that a general allegation that the appellants and other members of the Standing Committee made defamatory statements referred to in Ex.P.W. 3/B is not a sufficient compliance with the requirement of law to enable the Magistrate to take further action. On the other hand, according to the learned counsel, the complaint must specifically aver which particular allegation was made by which of the accused, in which case alone the individual accused will have an opportunity of effectively meeting the imputations alleged to have been made by him. In this connection Mr. Daphtary referred us to certain English decisions governing the law of libel and he also invited our attention to certain decisions of the High Courts.

9. On the other hand, the respondent, who appeared in person, has argued that at this stage the Court is concerned only with the question whether he has prima facie made out a case for his complaint being inquired into by the Magistrate and not whether he will be able to obtain a conviction of all or any of the appellants. That stage, he pointed out, will arise only during the course of the trial. He urged that in his complaint he has made a categorical statement that all the appellants have made the statements referred to in Ex.P.W. 3/B. As to whether the statements have been properly recorded by the Municipal Secretary, is again a matter which will arise only during the course of the trial. According to him the allegation made by him in the complaint regarding the statements said to have been made by the appellants is sufficient for further action being taken by the Criminal Court. He further contended that the statements alleged to have been substantively reproduced in Ex.P.W. 3/B and it has been placed before the Court in the complaint and that is a sufficient compliance with the requirement of law. He pleaded that the principles laid down by the English Court regarding the law of libel are not applicable when considering a case of defamation under the Indian Penal Code. He has also referred us to certain decisions in support of his contentions.

10. Before we refer to the decisions cited by Mr. Daphtary and the respondent on merits, it is

necessary to clear the ground by appreciating the nature of the jurisdiction exercised by the Magistrate under Sections 202 and 203, Cr.P.C. In *Chandra Das Singh v. Prokash Chandra Bose and Another*, ((1964) 1 SCR 639 : AIR 1963 SC 1430.) it has been held by this Court that the object of the provisions of Section 202, Cr.P.C. is to enable the Magistrate to form an opinion as to whether process should be issued or not. At the stage what the Magistrate has to see is whether there is evidence in support of the allegations made in the complaint and not whether the evidence is sufficient to warrant a conviction. It has been further pointed out that the function of the Magistrate holding the preliminary inquiry is only to be satisfied that a prima facie case is made out against the accused on the materials placed before him by the complainant. Where a prima facie case has been made out, even though much can be said on both sides, the committing Magistrate is bound to commit the accused for trial and the accused does not come into the picture at all till the process is issued.

11. The question arises whether in an action for defamation under Section 500, I.P.C., it is necessary that the actual statements containing the words alleged to have been used by the accused must be before the Court or whether it is enough that the statements alleged to have been made are substantially reproduced in the complaint. The further question is whether the complaint in this case is defective in the sense that the actual statements alleged to have been made by the individual accused have not been stated in the complaint.

12. We will now refer to the decisions cited by Mr. Daphtary. He has referred us, in the first instance, to the passage in *Halsbury's Laws of England*, Third Edition, Volume 24, page 90, Para 161, that for the statement complained of as being a libel or slander to be construed or interpreted, it is essential that the actual words and not merely their substance should be set for the verbatim in the statement of claim or indictment. Again he has referred us to another passage in the same volume as follows :

"As it is necessary in actions for libel or slander to set forth the actual words complained of in the statement of claim with proper innuendoes, so also it is necessary to do so in an indictment where words are of the essence of the offence."
(Page 135, Para 249).

13. In *Charles Bhadlaugh and Annie Besant v. The Queen*, ((1878) 3 QBD 607.) the Court of Appeal was dealing with an indictment for publishing an obscene book. *Bramwell, L.J.*, observes as follows :

"In some instances, words are the subject-matter of an indictment; and it follows from this principle, which I have mentioned that wherever the offence consists of words written or spoken, those words must be stated in the indictment; if they are not, it will be defective upon demurrer, in arrest of judgment or upon writ of error.... In like manner, there can be no doubt that in an indictment for defamatory libel it was necessary to set out the words complained of, so that the Court might judge whether they were or could amount to a libel.... it is manifest that where words constitute the offence, they must be stated in the indictment."

14. In *The Capital and Counties Bank Ltd. v. George Henty and Sons*, ((1882) 7 AC 741.) Lord *Blackburn* in dealing with an action for libel states as follows :

"The words themselves must have been set out in the declaration or indictment, in

order that the Court might be able to judge whether they were libel or not. And this still remains the law."

15. In *Collins v. Jones*, ((1955) 2 All ER 145.) Lord Denning quoted with approval the observation of lord Coleridge, C.J., in *Harris v. Waree*, ((1879) 4 CPD 125.) as follows :

"In libel and slander everything may turn on the form of words, and in olden days plaintiffs constantly failed from small and even unimportant variance between the words of the libel or slander set out in the declaration and the proof of them..... In libel and slander the very words complained of are the facts on which the action is grounded. It is not the fact of the defendant having used defamatory expressions, but the fact of his having used those defamatory expressions alleged, which is the fact on which the case depends."

16. It is clear by a reference to the above English Law that in an action for libel it is essential that the words themselves must be set out in the indictment and that requirement is insisted to enable the Court to judge whether those words published in writing amount to libel or not.

17. Mr. Daphtary referred us to certain decisions dealing with the nature of proof required in a prosecution for sedition under Section 124-A, I.P.C. But we do not think it necessary to refer to those decisions as we are not at this stage concerned with proof of the statements attributed to the appellants and which, according to the respondent, are defamatory.

18. Mr. Daphtary also referred us to the decisions in *Sarat Chandra Das v. The State* (AIR 1952 Ori 351.) and *Krishnarao v. Firm Radhakisan Ramsahai*. (ILR 1956 Nag 236 : AIR 1956 Nag 264.) In the Orissa High Court decision, two accused were being tried for an offence under Section 500, I.P.C. It is no doubt stated in the said decision that in a trial for defamation it is essential that the words alleged to be defamatory in character should be precisely set out and the accused should be individually given notice of what he is charged with, as the words so set out will constitute the foundation for defamation. It is further laid down that it is also essential that the words in question should be proved. A perusal of this decision will show that two accused were being prosecuted for defamation. In the complaint in that case it was stated that both the accused were alleged to have made certain statements. However, in the sworn statement the complainant had given a slightly different version. In his evidence before the Court the complainant attributed to the different accused different statements. It was, under those circumstances that the Court laid down the proposition referred to earlier. Understood in that context, it is clear that according to the High Court when different statements are attributed to different accused, the statements alleged to have been made by each of the accused must be set out and the individual accused must have notice as to what is specifically alleged against him.

19. In the second case, the Nagpur High Court dealing with a claim for damages for defamation observed as follows :

"We may point out that in a suit for damages for defamation the law requires that the plaintiff ought to allege the publication of the defamatory statement, set out the actual words used and also state that they were published or spoken to some named individuals and specify the time and place when and where they were published."

20. On the other hand, the respondent has invited our attention to the decisions reported in *Emperor*

v. Col. Bholanath, (ILR 1951 All 313 : AIR 1929 All 1.) K. S. Namjundaiiah v. Setti Chikka Thippanna (1952 Cr LJ 1633 : AIR 1952 Mys 123.) and Dhruva Charan Khandal v. Dinabandhu Patri.

21. In the first decision of the Allahabad High Court, Mukherji, J., observed :

"While I am not prepared to lay down, as a universal proposition, that in no case where the actual words used have not proved a conviction for defamation by word of mouth cannot be maintained, it must be conceded that in the majority of cases it should be so. Defamation is defined as follows :

'Whoever by words..... makes or publishes any imputation concerning any person intended to harm, or knowing or having reason to believe that such imputation will harm, the reputation.... is said... to defame that person'.

When the question arises as to whether the words used were intended to harm or had the effect of harming the reputation, the Court must be put in possession not only of the words used, but also of the context in which they were used.....

22. King, J., the other learned Judge of the Bench observes :

"I may here remark that in my opinion it is unnecessary to prove the exact words used by the accused, for the purpose of supporting a conviction for oral defamation. It is sufficient to prove the purport or substance of the defamatory imputations. No honest witness would profess to remember the exact words used by a person who has been speaking for even 15 minutes. At the most he may remember some striking phrase or expression. But a witness's failure to recall the exact words used or the exact context in which they were spoken is immaterial, provided that he can give a sufficiently clear account of the purport of the defamatory remarks. Although the learned counsel for the appellant argued that no conviction could be sustained unless the exact words were proved, he was unable to quote any authority for his proposition, and I am not prepared to accept it. English rulings on the English law of libel seem beside the point when the task before us is to apply the provisions of Section 499 of the Indian Penal Code to a case of alleged defamation by spoken words."

23. In the second case the Mysore High Court has laid down that it is sufficient for the purpose of Sections 499 and 500, I.P.C. that if witnesses are agreed in a substantial measure on the words of imputation uttered as it is hardly possible or necessary to reproduce every word or expression used.

24. In the last decision, the Orissa High Court has laid down that for the purpose of an offence under Section 500, I.P. C., it is enough if the witness are agreed in a substantial measure on the words of imputation uttered, for it is not possible even for a most honest witness to reproduce every such word or expression. This decision has also distinguished the earlier decision in Sarat Chandra Das and Another v. The State (supra) on the ground that observations contained in that judgment that the precise words uttered against the complainant should find a place in the charge were made in the context of the Court dealing with two accused, each of whom was alleged to have made different statements.

25. After a consideration of the various decisions referred to above, we are of the opinion that the

propositions laid down in English decisions dealing with libel that the actual words alleged to be used must be stated in the indictment cannot be applied on all force when dealing with the cases of defamation by spoken words under Section 499, I.P.C. It will be highly desirable no doubt if the actual words stated to have used by an accused and which are alleged to be defamatory are reproduced by the complainant. That actual words used or the statements made may be reproduced verbatim by the complainant if the words are few and the statement is very brief. But in cases where the words spoken are too many or the statements made are too long, in our opinion, it will be the height of technicality to insist that the actual words and the entire statements should be reproduced verbatim. The object of having, if possible, the actual words or the statements before the Court is to enable it to consider whether those words or the statements are defamatory in nature. That purpose or object will be served if the complainant is able to reproduce in his complaint or evidence in a substantial measure the words of imputation alleged to have been uttered. If the statements or the words placed before the Court by the complainant are held to be not defamatory, it will mean that the complaint will have to lose. Therefore, it is to his interest to get a proper adjudication from the Court that as far as possible the words spoken or the statements actually made and which he alleges to be defamatory are before the Court. But a complaint cannot be thrown out on the mere ground that the actual words spoken or the statements made have not been stated in the complaint. From the point of view of accused also it is necessary that the matters alleged to be defamatory in the complaint must be so stated as to enable them to know the nature of the allegations that they have to meet.

26. In this case we have already referred to Ex. P.W. 3/B, which according to the complainant, contains the statements made by the appellants during the discussion of the resolution leading to his suspension on December 11, 1964. The High Court, in this connection, has adverted to the evidence of P.Ws. 1, 3 and 4 on this aspect. As to how far the evidence of those witnesses is to be accepted, is a matter which will arise only during the trial of the complaint. From the averments made in the complaint, which refers to various matters referred to in Ex. P.W. 3/B, we are of the opinion, that the complainant has furnished in a substantial measure the words of imputation, which, according to him, are defamatory. Therefore, the contention of Mr. Daphtary that the complaint is defective inasmuch as it does not contain the actual words alleged to have been spoken by the appellants, has to be rejected.

27. The further question is whether the complaint is defective for the reason that the actual statements alleged to have been made by the individual accused have not been stated therein. So far as this aspect is concerned, if the case of the complainant is that each of the appellants made different statements or spoke different words, which are defamatory, then it is absolutely necessary that the complaint must specify the words spoken or the statements made by each of the appellants. But that is not the allegation in the complaint. We have already referred to the fact that it is specifically stated in the complaint that during the course of the discussion of the resolution, all the seven appellants made wild and baseless allegation against the complainant involving moral turpitude. According to him those statements are contained in Ex. P.W. 3/B. The evidentiary value of Ex. P.W. 3/B does not arise for consideration at this stage. The further question whether the complainant will be able to prove his allegation that all the seven appellants made all or any of the statements contained in Ex. P.W. 3/B, is again a matter which does not arise for consideration at this stage. We are only concerned to find out what are the allegations made by the respondent in his complaint against the appellants. When the case of the complainant is that all the seven appellants made the statements referred to in Ex. P.W. 3/B and he is prepared to go to trial on that footing, the question of the complainant being made to state the statements alleged to have been made by the individual accused does not at all arise. Such a situation will arise only when the case of the

complainant is that different statements were made by different accused, who are before the Court.

28. The Magistrate dismissed the complaint on the ground that there is no evidence on record as to which of the appellants made which allegation against the respondent and in the absence of such an important ingredient, no prima facie case against any of the appellants can be said to have been made out. This, in our opinion, is a fallacious approach made by the Magistrate in the face of the allegation made by the respondent that all the seven appellants made the statements referred to in Ex. P.W. 3/B. In our opinion, the High Court has made a correct approach when it held that the evidence, as it stands, implicates all the members of the Standing Committee, including the appellants in the charge of making the statements alleged to be defamatory and contained in Ex. P.W. 3/B. We are in entire agreement with the reasoning of the High Court on this aspect.

29. Before concluding the discussion, it is to be stated that the trial Magistrate has given an additional reason for dismissing the complaint. That reason is that the resolution passed by the Standing Committee on December 11, 1964 and the discussion preceding it by the members of the Standing Committee including the appellants, is covered by the Exceptions to Section 499, I.P.C. Unfortunately, the High Court also has touched upon this aspect and made certain observations. In our opinion, the question of the application of the Exceptions to Section 499, I.P.C., does not arise at this stage. Rejection of the complaint by the Magistrate on the second ground mentioned above cannot be sustained. It was also unnecessary for the High Court to have considered this aspect and differed from the trial Magistrate. It is needless to state that the question of applicability of the Exceptions to Section 499, I.P.C., as well as all other defences that may be available to the appellants will have to be gone into during the trial of the complaint.

30. To conclude we are satisfied that the High Court's order setting aside the order of the Magistrate dismissing the complaint under Section 203, Cr.P.C. and directing further inquiry to be made in the complaint of the respondent is correct.

31. The appeal fails and is dismissed.

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